

Docket No: RPC 572 PUS

REMARKS

The Examiner has rejected claims 1-3 and 12-54 as obvious over Apps (4,899,874) in view of Kappel (2,970,715) and in further view of Exhibit 2 from D.W. Plastics.

Claims 12 and 50

The Examiner's application of these references to some of the pending claims is unclear. The Examiner has not set forth a full analysis of what he believes are the differences between each reference and the claimed invention, the proposed modification and the motivation for the proposed modification. MPEP 706.02(j) is reproduced in part below:

## Contents of a 35 U.S.C. 103 Rejection

35 U.S.C. 103 authorizes a rejection where, to meet the claim, it is necessary to modify a single reference or to combine it with one or more other references. After indicating that the rejection is under 35 U.S.C. 103, the examiner should set forth in the Office action:

(A) the relevant teachings of the prior art relied upon, preferably with reference to the relevant column or page number(s) and line number(s) where appropriate,

(B) the difference or differences in the claim over the applied reference(s),

(C) the proposed modification of the applied reference(s) necessary to arrive at the claimed subject matter, and

(D) an explanation why one of ordinary skill in the art at the time the invention was made would have been motivated to make the proposed modification.

In particular, the Examiner has not presented a *prima facie* case of obviousness for his rejection of Claims 12 and 50. For example, the Examiner has not set forth "(B) the difference or differences in the claim over the applied reference(s)," "(C) the proposed modification of the applied reference(s) necessary to arrive at the claimed subject matter," or (D) an explanation of the necessary motivation. The Examiner appears to discuss that Apps is missing a "logo" and why there would be motivation to add such a "logo" to Apps based upon the additional references, but the term "logo" is not in either claim 12 or 50. Applicant respectfully requests a clarification of this rejection so that Applicant can have a full opportunity to address this rejection.

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Obviousness Rejection

Claim 1 requires a lower wall portion having "an upper edge and a lower edge each having a curved shape substantially along the length thereof." As is not disputed, the lower edge of the D.W. Plastics wall is straight, not contoured. Further, the Board has indicated that modification according to any suggestion from D.W. Plastics would still leave the lower edge of the side wall straight. (Page 8 of Board Decision).

Claim 29 specifies that first and second columns extend a first height and a second height above first and second locations on the lower edge of the side structural members, respectively. As the Board has indicated, if Apps '874 were modified according to Exhibit 2 from D.W. Plastics as the Examiner suggests, the lower edge of the side wall would have a straight edge. Therefore, Claim 29 is patentable.

Claim 45 specifies that first and second locations directly opposite one another on the upper edges of the two side structural members are vertically offset. In contrast, in Exhibit 2 from D.W. Plastics, directly opposing locations on the upper edges of the two side structural members are always vertically equal, not vertically offset. Therefore, Claim 45 is patentable.


Dependent claims 15, 32 and 54 have been amended to specify that the lower edge of the side wall is wave shaped. The Board Decision stated, "D.W. Plastics does not suggest making the lower edge of the side wall in a similar wave shape . . ." (Board Decision, Page 8). Therefore, Claims 15, 32 and 54 are independently patentable.

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**CONCLUSION**

Reconsideration is requested. If any additional fees are due, please charge  
Deposit Account No. 50-1984.

Respectfully submitted,



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Version with markings to show changes made

IN THE CLAIMS

1. (Twice Amended) A stackable low depth case for retaining and transporting bottles, the case comprising opposing side walls and opposing end walls forming an outer shell, a case bottom disposed substantially within said outer shell, the case comprising:

said side walls including a lower wall portion and a plurality of spaced upwardly projecting pylons, four corner pylons defining four corners of the case wherein at least one of the lower wall portions includes an upper edge and a lower edge each having a [contoured] curved shape substantially along the length thereof; and

a plurality of spaced upwardly projecting columns generally disposed within the outer shell defining, in combination with the: case bottom, said side walls, and said end walls, a plurality of bottle retaining pockets, said columns and said pylons extending above the lower wall portions and below a top surface of the retained bottles.

15. (Amended) The case of claim 12, wherein the lower edge of [the] each side structural member is [each contoured] wave-shaped along its respective length [lengths].

32. (Amended) The crate of claim 29, wherein the lower edge of [the] each side structural member is [contoured] wave-shaped along its respective length.

54. (Amended) The case of claim 50, wherein [at least one] each of the upper and lower edges of the side structural members is [contoured] wave-shaped along its length.